

DECISION

Vannisky 24963
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-206070.3**DATE:** April 22, 1983**MATTER OF:** Tayloe Associates**DIGEST:**

1. Sole-source award to incumbent contractor to provide critical services for the period from the expiration of the firm's contract to the completion of a competition for a new contract was justified where the agency reasonably concluded that the incumbent was the only firm that could meet the agency's requirements within the required timeframe.
2. Mere submission of unsolicited proposal is not sufficient to call into question sole-source determination which has been found to be reasonable.
3. Complaint regarding agency's dilatory actions in completing procurement action is without merit where record of agency action shows that agency was proceeding at a reasonable pace in view of complexity of agency requirements and number of protests filed in regard to the procurement.

Tayloe Associates (Tayloe) protests the Nuclear Regulatory Commission's (NRC) sole-source extension of an existing contract for stenographic reporting services with the Alderson Reporting Company (Alderson). NRC extended its contract with Alderson seven times pending final award of a new contract for stenographic services under request for proposals (RFP) No. RS-SECY-82-473 and its predecessor, invitation for bids (IFB) No. RS-SECY-82-471. Tayloe requests GAO to determine that the extension beyond November 15, 1982, was not reasonably based and, therefore, was illegal. Tayloe requested our Office to direct NRC to terminate for convenience that portion of the work covered by the Alderson extension that Tayloe priced lower in an unsolicited proposal dated November 6, 1982, and to award that work to Tayloe. Additionally, Tayloe requested that we direct NRC to complete the subject procurement action within a time certain to be determined by GAO.

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The protest is denied.

BACKGROUND

NRC requires stenographic reporting services for various hearings and meetings held nationwide. NRC's most recent contract to provide these services with Alderson was to have expired on January 13, 1982. That contract was extended with Alderson several times on a sole-source basis while the agency was in the process of conducting a competition to award a new contract.

On December 18, 1981, NRC issued an IFB for a contract for stenographic reporting services. On January 12, 1982, Tayloe filed a protest with our Office, complaining that the IFB contained inadequate information for the bidders to estimate travel expenses, costs to be incurred by the contractor. On February 5, 1982, NRC announced that it was revising the IFB to address the concerns raised in the protest.

In March 1982, Tayloe learned that NRC was contemplating changing the procurement from a total small business set-aside, as originally specified in the IFB, to an unrestricted procurement. Tayloe sought the assistance of the Small Business Administration (SBA) and SBA determined that the procurement should remain a small business set-aside. NRC disagreed with the determination and, on March 18, 1982, SBA issued a standard form 70 (SF 70) requesting NRC's formal decision on the matter.

On May 2, 1982, Tayloe filed a second protest with our Office complaining that NRC was procrastinating in responding to SBA. On May 20, 1982, NRC issued its response to the SF 70; the response indicated that the procurement was to remain a small business set-aside. Also, on May 20, 1982, NRC cancelled the IFB and announced that it planned to issue an RFP. On August 6, 1982, the RFP was issued. At that time, NRC anticipated making the award on November 15.

Periodically during this time, NRC extended the Alderson contract on a sole-source basis, so stenographic reporting services could be provided until the award of the new contract.

Tayloe anticipated that NRC would not be in a position to award the new contract by November 15 and submitted an unsolicited proposal to NRC on November 6, 1982, in anticipation of and to compete for the further extension of the contract beyond November 15, 1982.

Since NRC had not awarded the contract by November 15, 1982, the agency was again faced with an interim period during which it had a need for stenographic reporting services but had no contract for those services. NRC extended its contract with Alderson on the basis that Alderson was the only firm able to provide the services within the required timeframe. NRC based this conclusion on the fact that Alderson's reporters already were familiar with NRC hearing procedures and members of the Commission and staff. NRC reported that Alderson had demonstrated that it had the necessary, qualified personnel to respond to work orders for reporting services at meetings and hearings throughout the United States. NRC believed that extending Alderson's contract to January 15, 1983, provided sufficient time to permit the pending competitive contract to be awarded. Because the new contract could not be awarded by January 15, 1983, NRC subsequently extended Alderson's contract twice, with the last extension running until March 15, 1983. NRC awarded the new contract to Tayloe on March 18, 1983.

SOLE-SOURCE EXTENSION

The primary issue in this protest is whether NRC reasonably determined that only the incumbent contractor could provide stenographic reporting services in the interval between the termination of the contract and the award of a new contract.

As a general matter, Government procurements must be conducted on a competitive basis to the maximum extent practicable. This requirement applies to contract extensions and renewals. See Federal Data Corporation, 59 Comp. Gen. 283 (1980), 80-1 CPD 167. We have held, however, that sole-source acquisitions may be authorized where (1) the procuring agency's minimum needs can be met only by items or services that are unique, (2) time is of the essence and only one known source can meet the agency's needs within the required timeframe, (3) a sole-source award is necessary to insure compatibility between the procured item and existing equipment, or (4) an award to other than the proposed sole-source contract would pose unacceptable technical risks. Cerberonics, B-205063, April 14, 1982, 82-1 CPD 345.

Because competitive procurements are preferred, our Office will scrutinize closely a sole-source determination. Kent Watkins and Associates, Inc., B-191078, May 17, 1978, 78-1 CPD 377. The standard we apply in determining the propriety of a sole-source award is one of reasonableness, i.e., unless it can be shown that the contracting agency acted without a reasonable basis, our Office will not question the decision to procure on a sole-source basis. Federal Data Corporation, supra.

Taylor questions whether NRC has met the requirements for justifying the sole-source award. We find it has.

NRC claims that Alderson was the only known source that could meet the agency's needs within the required timeframe. NRC was already in the process of awarding a new contract on a competitive basis. Considering that the agency was in the process of evaluating proposals submitted in response to the RFP in September, we agree with NRC that it would be unreasonable to expect it to conduct an interim competition rather than extend the incumbent contractor.

NRC had extensive nationwide reporting requirements which had to be supplied on an ongoing basis. Any interruption in these services would have significantly impaired the operations of the agency. The complexity of the requirements and the necessity of awarding the contract to a competent, responsible contractor were factors that

contributed to the length of time the agency required to evaluate the original proposal. To require the agency to conduct an interim competition that did not insure it would receive the same quality of service as did the ongoing procurement would not have been in the interest of the Government. We have stated that we will not require an agency to run an unacceptable technical risk for the sake of obtaining competition on an interim requirement. Hughes Aircraft Company, 53 Comp. Gen. 670 (1974), 74-1 CPD 137. We will not impose such a requirement on NRC. We find the agency's actions in extending the contract with Alderson on a sole-source basis to be reasonable.

UNSOLICITED PROPOSAL

Tayloe's request that we terminate for convenience the last extension of Alderson's contract is now moot since the new contract has been awarded. However, we disagree with Tayloe's contention that the unsolicited proposal it submitted to NRC on November 6, 1982, should have been considered favorably when NRC's need for interim stenographic reporting services arose on November 15, 1982.

While an agency generally has a duty to consider unsolicited proposals, see Metal Art, Inc., B-192901, February 9, 1979, 79-1 CPD 91, Tayloe was not prejudiced since NRC's sole-source determination was reasonable. We have held that the mere submission of an unsolicited proposal is not sufficient to call into question a sole-source determination which has been found to be reasonable. Harris System Pest Control, B-199636.2, August 3, 1981, 81-2 CPD 81.

NRC did not consider that Tayloe's proposal provided a viable alternative to meet its interim reporting requirements. Tayloe made clear in its proposal that it could only provide reporting services in the Washington, D.C., metropolitan area. Since NRC required reporting services nationwide, it did not consider Tayloe as an alternative source that could meet its needs within the required timeframe.

The protester bears the burden of proving that the agency's decision was unreasonable, CPT Corporation, B-200551, December 29, 1980, 80-2 CPD 444. We believe that Tayloe failed to show that NRC's sole-source extension was unreasonable and, consequently, we cannot sustain the protest on this basis.

TIMELINESS OF AWARD

Finally, Tayloe requested that we direct NRC to complete the subject procurement action within a time certain, to be determined by our Office. Tayloe asserted that NRC was dilatory in awarding the new contract and that GAO should obtain a firm schedule from NRC for the completion of the procurement. Since the agency awarded the new contract on March 18, 1983, Tayloe's request is now moot. Nevertheless, the record indicates that Tayloe's complaints about the agency's procrastination are without merit.

Tayloe contended that NRC was procrastinating in the subject procurement, "a simple fixed-price contract for the services of court reports that is priced on the basis for a lump sum page price." The protester stated that the services sought in the pending contract were not complex activities requiring sophisticated computer or scientific knowledge but rather, services that were simply and routinely obtained by other Government agencies through formal advertising. Hence, Tayloe believed the agency could not justify the amount of time required for contract award on the basis of the complexity of the services required. Further, while Tayloe acknowledged that NRC would eventually award the pending contract competitively, Tayloe argued that the delay in award was prejudicial to Tayloe since the extensions of Alderson's contract perpetuated "the monopoly of the incumbent contractor for NRC's stenographic reporting requirements."

We denied a protest based on similar facts in Information Marketing, Inc., B-205903, May 25, 1982, 82-1 CPD 497, aff'd., sub nom., Showcase Corporation, B-205903.3, December 7, 1982, 82-2 CPD 508. In that case, we found a 1-year sole-source extension of an incumbent contract, pending development of exact technical specifications for a

competitive procurement, to be necessary since the agency would have suffered a serious disruption in services if the incumbent had not been retained for that period.

Here, NRC emphasizes the fact that its requirements for complex, nationwide reporting services and its prior experience with a contractor that was technically incompetent required that it have time to ascertain the technical competence and responsibility of the prospective contractor. It was engaged in that process from September 13, 1982, and awarded the new contract on March 18, 1983.

NRC also points out that, during the period in which the procurement was pending, Tayloe filed three protests and requested documents on three occasions under the Freedom of Information Act and that Alderson protested the decision to make the procurement a small business set-aside and also requested documents under the Freedom of Information Act. NRC contends that those actions also served to lengthen the time necessary to complete the pending procurement.

On the basis of the chronology of events in this procurement action, we believe that NRC acted reasonably and without undue delay in the completion of this procurement.

The protest is denied.

for *Harry R. Van Cleave*
Comptroller General
of the United States